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SE58

OLC 79-0770/6

MEMORANDUM FOR: See Distribution

STATINTL

FROM : [REDACTED]  
Assistant Legislative Counsel

SUBJECT : OMB Proposed Senior Intelligence Executive Service

1. As promised in an earlier memorandum on the same subject (OLC 79-0770/5), I am forwarding for your comments the Office of Management and Budget draft proposal which seeks to "authorize" the heads of NSA, CIA and DIA to establish the equivalent of Senior Executive Services within their respective agencies. (U/IUO)

2. As addressees are aware, the authority which is ostensibly granted by this proposal is, in the case of the Director of the Central Intelligence Agency, already available to him via Section 8 of the CIA Act of 1949. The authority, therefore, is not only redundant but also raises the implication that the DCI's current Section 8 authority is insufficient to permit him to establish such a system on his own without legislation. This Office has consistently held and transmitted to OMB the position that this is not the case. We have also made it well known that any bill which, in any way, form or manner, detracted either expressly or impliedly from the authority of the DCI to handle personnel matters would be vigorously opposed by this office. (U/IUO)

3. Rather than providing herein an analysis of the terms of the bill, I have attached along with the bill a section-by-section analysis of the same. Please address your written comments to the undersigned not later than close of business 7 June 1979. (U/IUO)

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Attachment

See Distribution on next page

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1 - OLC Subject  
1 - OLC Chrono  
OLC:MDC:sf (31 May 1979)

A BILL

To authorize the establishment of Senior Intelligence Executive Services and Merit Pay and Awards Systems within the National Security Agency, Central Intelligence Agency and Defense Intelligence Agency and to make necessary amendments to Title 5, U.S. Code.

1        Be it enacted by the Senate and House of Representatives of the  
2        United States of America in Congress assembled, That this Act may be  
3        cited as the Senior Intelligence Executive Services Act of 1979.

4                TITLE I - SENIOR INTELLIGENCE EXECUTIVE SERVICES

5                SEC. 2. The Secretary of Defense (or his designee) for the Nation  
6        Security Agency and for the Defense Intelligence Agency, and the Director  
7        of Central Intelligence for the Central Intelligence Agency may establish  
8        Senior Intelligence Executive Services within the respective agencies  
9        comparable to the Senior Executive Service established in Title IV  
10       of the Civil Service Reform Act of 1978. The Director of Central Intel  
11       lence, and under the authority of the Secretary of Defense, the Director  
12       of the National Security Agency and the Defense Intelligence Agency,  
13       hereinafter referred to as the Directors, are authorized to adopt  
14       administratively those provisions of title 5, United States Code, con-  
15       tained in Title IV of the Civil Service Reform Act of 1978 that the  
16       Directors consider necessary to administer a separate Senior Intelligence  
17       Executive Service within the agency headed by such Director, to appoint  
18       without regard to the civil service laws, individuals to positions estab  
19       lished within such Senior Intelligence Executive Service and, notwithstanding  
20       limitation on compensation set out in any other law, to pay individuals  
21       so appointed in relation to the pay prescribed under title 5, United

1 States Code, for the Senior Executive Service. Any provisions so adop  
2 shall be subject to the same limitations imposed with respect to the co  
3 parable provisions of title 5, United States Code, including the limita  
4 in section 5383(b) of title 5 on aggregate pay. Notwithstanding any of  
5 provisions so adopted, each Director, may detail or assign individuals  
6 the jurisdiction of such Director appointed to the particular Senior In  
7 telligence Executive Service to serve in non-Senior Intelligence Executive  
8 Services positions in which the appointee's expertise and experience ca  
9 of benefit to the National Security Agency, Central Intelligence Agency  
10 Defense Intelligence Agency, or another Government agency and the appoi  
11 shall not lose thereby any of the entitlements or status associated with  
12 the appointment in the Senior Intelligence Executive Services.

13. SEC. 3. Awarding of Rank in the Senior Intelligence Executive Serv

14. (a) During any fiscal year, the President, based on the  
15. recommendations of the Secretary of Defense, or the Director of Central  
16 Intelligence, may, subject to subsection (b) of this section, award to a  
17 Senior Intelligence Executive Service appointee the rank of

18 (1) Meritorious Intelligence Executive, for sustained  
19 accomplishment, or

20 (2) Distinguished Intelligence Executive, for sustained  
21 extraordinary accomplishment.

22 A Senior Intelligence Executive Service appointee awarded a rank under  
23 paragraphs (1) or (2) of this section shall not be entitled to be  
24 awarded that rank during the following four fiscal years.

25 (b) During any fiscal year -

26 (1) The number of Senior Intelligence Executive Service

1 appointees awarded the rank of Meritorious Intelligence Executive  
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2 within each Service may not exceed 5% of the particular Senior  
3 Intelligence Executive Service; and

4 (2) The number of Senior Intelligence Executive Service  
5 appointees awarded the rank of Distinguished Intelligence Executive  
6 within each Service may not exceed 1% of the particular Senior  
7 Intelligence Executive Service.

8 (c) (1) Receipt by a Senior Intelligence Executive Service  
9 appointee of the rank of Meritorious Intelligence Executive entitles  
10 such individual to a lump sum payment of the amount specified in  
11 section 4507(e)(1) of title 5, United States Code, in addition to  
12 the basic pay or any performance awards paid to the Senior Intelligence  
13 Executive Service appointee.

14 (2) Receipt by a Senior Intelligence Executive Service  
15 appointee of the rank of Distinguished Intelligence Executive entitles  
16 such individual to a lump sum payment of the amount specified in  
17 section 4507(e)(2) of title 5, United States Code, in addition to the  
18 basic pay or any performance awards paid to the Senior Intelligence  
19 Executive Service appointee.

20 SEC. 4. Each Director may grant a sabbatical to any appointee  
21 to the Senior Intelligence Executive Service under the jurisdiction of  
22 such Director in accordance with the provisions of section 3396(c) of  
23 title 5, United States Code.

24 SEC. 5. Annual leave accrued by an individual while serving in  
25 a position in a Senior Intelligence Executive Service shall not be  
26 subject to the limitation on accumulation imposed by section 6304  
27 of title 5, United States Code.

SEC. 7. (a) Section 8336 of title 5, United States Code, is amended by redesignating section 8336(d) as (j) and inserting immediately after subsection (h) the following new subsection:

"(i) A member of any of the Senior Intelligence Executive Services who is removed from such Senior Intelligence Executive Service for less than fully successful performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity."

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d) or (h)" and inserting in lieu thereof "section 8336(d), (h) or (i)."

SEC. 7. Section 2108 of title 5 U.S.C., is amended by -

(1) striking the period at the end of paragraph (3) and inserting, in lieu thereof, a semicolon; and

(2) adding at the end of paragraph (3) the following:  
"but does not include applicants for, or members of, any of the Senior Intelligence Executive Services."

SEC. 8. The Directors will submit to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence of the Congress at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the respective Senior Intelligence Executive Service. The report shall include -

(a) the percentage of senior executives at each pay rate employed at the end of the preceding fiscal year;

2 awards paid during the preceding fiscal year; and,

3 (c) the number of individuals removed from the Senior  
4 Intelligence Executive Service for less than fully successful  
5 performance.

6 SEC. 9. The Director of the National Security Agency and the Direc  
7 of the Defense Intelligence Agency may submit to the Director of Centr  
8 Intelligence a listing of those Senior Intelligence Executive  
9 Service positions within their respective agencies that such Director  
10 determines could be suitably filled by individuals from another  
11 Senior Intelligence Executive Service or from the Senior Executive  
12 Service. The Director of Central Intelligence will combine any such  
13 information received with comparable information from the Central  
14 Intelligence Agency and in accordance with the request of the  
15 Directors of those agencies will assist in recommending candidates  
16 to fill such particular agency positions. The Director of Central  
17 Intelligence, in consultation with the Office of Personnel Management,  
18 will likewise assist appointees in the Senior Intelligence Executive  
19 Services who are desirous of obtaining positions in the Senior Executive  
20 Service to locate suitable positions.

21 TITLE II MERIT PAY AND CASH AWARDS

22 SEC. 10. Merit Pay and Cash Awards. . Notwithstanding any limitatio  
23 on compensation in any other law, each Director is authorized to establi  
24 merit pay and cash awards systems for employees of the agency that he he  
25 comparable to that system established in chapter 54 of title 5, United  
26 States Code and are authorized to adopt those provisions of chapter 54 o

- 1 title 5, United States Code, which such Director considers necessary
- 2 to establish such a system.
- 3 SEC. 11. This act takes effect on the date of enactment.



## SECTIONAL ANALYSIS

Section 2 - This Section authorizes the Secretary of Defense (or his designee) for the National Security Agency and the Defense Intelligence Agency, and the Director of Central Intelligence for the Central Intelligence Agency to establish a separate Senior Intelligence Executive Service within each agency, to appoint individuals to positions within such a Service and to pay individuals so appointed in relation to the pay established by Title 5 of the U.S. Code for the Senior Executive Service to include appropriate performance awards. These appointments are to be made without regard to the provisions of Sections 2102 and 2103 of Title 5 of the U.S. Code. The intent of this section is to provide the authorization necessary to establish, within security constraints and existing personnel systems, senior executive systems for each of the National Security Agency, Central Intelligence Agency, and the Defense Intelligence Agency. It is fully intended that the systems adopted by the agencies will conform as near as possible, within these constraints, to the Senior Executive Service established under Title IV of the Civil Service Reform Act of 1978. The systems to be established will be subject to the same limitations on pay and bonuses as those established for the Senior Executive Service. The Director of Central Intelligence already possesses broad statutory authority to adopt the features of the Senior Executive Service. The purpose of this legislation, without prejudice to the validity of those authorities, is intended to express Congressional encouragement that those authorities be used to establish a system comparable to the Senior Executive Service. The number of positions established within the Senior Intelligence Executive Services shall be controlled by the Secretary of Defense for the National Security Agency and the Defense Intelligence Agency and the Director of Central Intelligence for the Central Intelligence Agency in the same manner as they have historically controlled the number of supergrades at the agencies. This legislation is not intended to supplant the normal budgetary process on the limitation of supergrades.

Section 3 - This Section provides the authorization necessary to award ranks to appointees in the Senior Intelligence Executive Services comparable to the ranks available to appointees in the Senior Executive Service.

Section 4 - This Section provides the authorization necessary for the Directors to grant sabbaticals to appointees in the Senior Intelligence Executive Services to the same extent as is available to appointees in the Senior Executive Service.

Section 5 - This Section removes the current limitation on accumulation of annual leave for appointees in the Senior Intelligence Executive Services the same as such limitation was removed from appointees in the Senior Executive Service.

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for those removed from the Senior Intelligence Executive Services for less than fully successful performance, similar to provisions for the retirement of Senior Executive Service appointees. Those who do not meet the age or service requirements for early retirement would be reassigned to another Senior Executive position or moved to a non-Senior Intelligence Executive Service position elsewhere in the Agency at a level equivalent to GS-15 or above. These alternatives would be available through the adoption of the provisions of the Senior Executive Service under Section 1 of this Act.

Section 7 - This Section amends Section 2108 of title 5 of the U.S. Code to exclude from the definition of "preference eligible" applicants for, or members of, the Senior Intelligence Executive Services.

Section 8 - This Section because of security restraints provides for reports to the respective intelligence committees of Congress concerning the Senior Intelligence Executive Services similar to that information reported to the Congress by the Office of Personnel Management for the Senior Executive Service.

Section 9 - The Section authorizes the Directors of the National Security Agency and the Defense Intelligence Agency to submit to the Director of Central Intelligence a listing of those Senior Intelligence Executive Services positions within the respective agency which the Director determines could be suitably filled by individuals from another Senior Intelligence Executive Service or from the Senior Executive Service. The Director of Central Intelligence will combine any such information received with comparable information from the Central Intelligence Agency and in accordance with the request of the Directors of those agencies will assist in locating possible candidates for the particular agency positions.

Section 10 - This Section authorizes the Directors to establish merit pay and cash awards systems comparable to that established in Section 5403 of Title 5 of the U.S. Code for employees paid under the General Schedule. The criteria and other procedures necessary for the implementation of the merit pay and cash awards systems would follow as closely as possible the criteria and procedures established pursuant to the Civil Service Reform Act.